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**ILLINOIS MULTISTATE PLAINTIFF CLASS ACTIONS:
ABROGATION OF JURISDICTIONAL LIMITATIONS
ON STATE SOVEREIGNTY—
MINER V. GILLETTE CO.**

In concert with the rise of consumerism, class suits have become an increasingly important weapon in deterring consumer exploitation.¹ By acting as a vehicle to redress group wrongs, such suits purportedly prevent a multiplicity of individual actions from being instituted for the same wrongful act while concurrently providing relief to those whose claims may otherwise be too small to warrant individual legal redress.²

In the typical consumer class suit,³ a nationwide class of injured consumers is sought to be joined in order to obtain the largest possible judgment against the defendant.⁴ Consequently, multistate class actions traditionally were filed in the federal courts because these courts had jurisdiction to hear actions involving multistate plaintiff classes.⁵ A recent series of pro-

1. See Landers, *Of Legalized Blackmail and Legalized Theft: Consumer Class Actions and the Substance-Procedure Dilemma*, 47 S. CAL. L. REV. 842, 845 (1974); Ross, *Multistate Consumer Class Actions in Illinois*, 57 CHI.-[KENT] L. REV. 397, 398 (1981) [hereinafter cited as Ross]; Starrs, *The Consumer Class Action—Part II: Considerations of Procedure*, 49 B.U.L. REV. 407, 410 (1969) [hereinafter cited as Starrs]; Tornquist, *Roadmap to Illinois Class Actions*, 5 LOY. U. CHI. L.J. 45, 49 (1974) [hereinafter cited as Tornquist].

2. *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 560 (1968), *vacated*, 417 U.S. 156 (1974). See Starrs, *supra* note 1, at 416-17; Tornquist, *supra* note 1, at 48-49. See also Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 334-35, 371 N.E.2d 634, 641-42 (1977) (class actions important "procedural vehicles" for redressing multiple claims); Hoover v. May Dep't Stores Co., 62 Ill. App. 3d 106, 111-12, 378 N.E.2d 762, 767-68 (5th Dist. 1978), *rev'd on other grounds*, 77 Ill. 2d 93, 395 N.E.2d 541 (1979) (representative suits particularly useful to redress trivial consumer claims). It has been suggested that initiation of small claim class actions increase, rather than decrease the judicial workload, and that the only persons to derive any meaningful benefit from such actions are the attorneys for the plaintiff class. See Delle Donne & Van Horn, *Pennsylvania Class Actions: The Future in Light of Recent Restrictions on Federal Access?*, 78 DICK. L. REV. 460, 479-80 (1974) [hereinafter cited as Delle Donne & Van Horn]; Comment, *Expanding the Impact of State Court Class Action Adjudications to Provide an Effective Forum for Consumers*, 18 U.C.L.A. L. REV. 1002, 1020 (1971) [hereinafter cited as *Impact*].

3. The terms "consumer class suit," "class action," and "class suit" are used synonymously in this Note to refer to representative actions whereby each individual sought to be included in the plaintiff class has sustained similar, albeit relatively minor, injuries as a result of a defendant's wrongful conduct. Although the claims of individual class members are separate and distinct, a common question of fact or law predominates over any individual concerns of the class. Unless otherwise indicated, it is assumed that in class suits involving a multistate plaintiff class, each plaintiff has incurred injury within the jurisdiction where he resides.

4. Conversely, the larger the class, the smaller the pro rata cost of maintaining the action to each member of the plaintiff class. See Ross, *supra* note 1, at 398.

5. In a diversity action, a federal court, in the absence of a federal statute, generally has no greater in personam jurisdiction than the courts of the state in which it sits. *Royal Lace Paper Works v. Pest Guard Prod., Inc.*, 240 F.2d 814, 816 (5th Cir. 1975). See FED. R. CIV.

cedurally restrictive Supreme Court decisions, however, has effectively precluded maintenance of such suits in the federal courts.⁶ Consumer advocates have been urging state courts to entertain class suits comprised of a multistate plaintiff class.⁷

P. 4(f). Multistate plaintiff classes have been frequently certified in federal courts, however, because federal class actions typically have arisen in response to violations of statutes which expressly provide for national service of process. See Fisch, *Notice, Costs and the Effect of Judgment in Missouri's New Common Question Class Action*, 38 MO. L. REV. 173, 211 (1973) [hereinafter cited as Fisch]. For a discussion of the various circumstances under which Congress has provided for nationwide service of process, see 4 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* §§ 1118, 1125 (1969). Since the federal judicial system is unitary rather than fragmented, a few courts have held that in federal class actions, the multistate composition of a plaintiff class is irrelevant to the issue of certification. See, e.g., *Appelton Electric Co. v. Advance-United Expressways*, 494 F.2d 126, 140 (7th Cir. 1974); Note, *Binding Effect of Class Actions*, 67 HARV. L. REV. 1059, 1066 (1954).

6. *Snyder v. Harris*, 394 U.S. 332 (1969), *reh'g denied*, 394 U.S. 1025 (1969), was the first of four Supreme Court rulings that were hostile to the procedural aspects of consumer class claims. See *Hearings on S. 3201 Before the Consumer Subcomm. on Consumer Protection of the Senate Comm. on the Judiciary*, 91st Cong., 2d Sess. 81 (1970) ("[t]he 'promise' of the federal class action was nipped in the bud by the unfortunate decision in *Snyder v. Harris*") (statement of attorney Jay Dushoff). In *Snyder*, the Court held that the separate and distinct claims of individual class members could not be combined to satisfy the jurisdictional amount requirement of the diversity statute. 394 U.S. at 338. The Court so ruled in spite of the fact that imposition of such a requirement substantially frustrated the liberal provisions of the federal class action statute. *Id.* See Comment, *In Personam Jurisdiction Over Nonresident Plaintiffs in Multistate Class Actions*, 17 WASHBURN L.J. 382, 383 (1978) [hereinafter cited as *In Personam Jurisdiction*]. Although *Snyder* left open the possibility that in a diversity suit a class action could be entertained in federal court if at least one class member had a claim greater than \$10,000, the Court rejected this contention in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973). The *Zahn* Court held that a class suit seeking pecuniary relief could not be tried in federal court unless all class members, not just the named representatives, satisfied the jurisdictional amount requirement. In dictum, the Court further asserted that class actions invoking federal question jurisdiction must satisfy the same amount in controversy requirements as a class suit brought under diversity jurisdiction unless Congress has exempted the particular federal question area from meeting this requirement. *Id.* at 302 n.11. Unfortunately, few federal statutes which are appropriate for consumer class litigation statutorily exempt the amount in controversy requirement. See Note, *Consumer Class Actions with a Multistate Class: A Problem of Jurisdiction*, 25 HASTINGS L.J. 1411, 1415-16 (1974) [hereinafter cited as *Consumer Class Actions*]. See generally Tornquist, *supra* note 1, at 60 (listing various federal statutes which provide for a private right of action absent the amount in controversy requirement).

The Court further restricted maintenance of federal consumer class suits in *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), when it held that not only must notice be given to all identifiable class members, but the representative plaintiffs must initially finance the cost of this notice. Due to the large number of individuals typically sought to be included in a consumer class suit, financing the cost of personal notice to each class member is often prohibitive. See *In Personam Jurisdiction*, *supra*, at 384-85. Most recently, the Supreme Court ruled in *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978), that under most circumstances, if class members can only be ascertained through investigation, the class representatives must finance the cost of the investigation.

7. See *Miner v. Gillette Co.*, 87 Ill. 2d 7, 20, 428 N.E.2d 478, 485 (1981) (Ryan, J., dissenting). See also Delle Donne & Van Horn, *supra* note 2, at 462-63; Forde, *Class Actions in*

Although state courts have long permitted bona fide consumer class actions that are comprised of a resident plaintiff class,⁸ only in very limited circumstances have these courts allowed certification of a plaintiff class that includes nonresidents.⁹ The Illinois courts, which have adjudicated representative suits¹⁰ for over a century,¹¹ have permitted nonresident absentees to be members of the plaintiff class only if the nonresidents seeking to be included in the class were affiliated with Illinois or if the state had a special interest in adjudicating their claims.¹² Other state courts also have been reluctant to approve certification of a multistate class unless similar circumstances are manifest.¹³ Recently, the Illinois Supreme Court veered from precedent. In *Miner v. Gillette Co.*,¹⁴ the high court condoned certification of a primarily nonresident plaintiff class even though no special state interest existed to justify adjudicating the claims of nonresident absentees who lacked any germane contacts with the state.

The *Miner* decision places Illinois in the forefront of a recent movement¹⁵ which recognizes that different constitutional standards govern the authority of a state to bind nonresident plaintiffs, as opposed to nonresident defen-

Illinois: Toward a More Attractive Forum for this Essential Remedy, 26 DEPAUL L. REV. 211, 213 (1977) [hereinafter cited as Forde].

8. For a discussion of the origins of Illinois class actions, see generally Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 335, 371 N.E.2d 634, 641-42 (1977); Tornquist, *supra* note 1, at 49.

9. See, e.g., Shutts v. Phillips Petroleum Co., 222 Kan. 527, 567 P.2d 1292 (1977) (absent a special state interest in adjudicating nonresident claims, these individuals will not be certified as members of the plaintiff class), *cert. denied*, 434 U.S. 1068 (1978).

10. Although the terms representative suit and class suit are used interchangeably in this Note, the term "representative" generally refers to the named persons initially maintaining the action. The word "class" refers to all persons whom the named individuals claim to represent. See Tornquist, *supra* note 1, at 49. It may be assumed that most, if not all, class members will never appear before the court.

11. Forde, *Illinois' New Class Action Statute*, 59 CHI. B. REC. 120 (1977) [hereinafter cited as Forde II].

12. Compare *Larson v. Pacific Mut. Life Ins. Co.*, 373 Ill. 614, 27 N.E.2d 458 (1940) (full faith and credit accorded California decree emphasizing that state interest considerations that exist in disputes involving nonresident contributions to locally situated insurance funds justified entertainment of multistate class suits) and *Kimbrough v. Parker*, 344 Ill. App. 483, 101 N.E.2d 617 (1st Dist. 1951) (certification of nonresident plaintiff class appropriate in circumstances where nonresidents innocently respond to fraudulent solicitation by bogus Illinois religious corporation because Illinois has interest in rectifying wrong committed by local entity) with *Spirek v. State Farm Mut. Auto. Ins. Co.*, 65 Ill. App. 3d 440, 382 N.E.2d 111 (1st Dist. 1978) (nonresidents who have no affiliation with forum in respect to subject matter of suit cannot be bound by local adjudication of their interest).

13. See, e.g., *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 362 A.2d 1177 (App. Div. 1976) (failure to identify state interest in adjudicating claims of individuals who have no germane contact with forum is grounds for denying these persons membership in plaintiff class). See generally *Consumer Class Action*, *supra* note 6, at 1424-28 (discussing limited situations in which states have extended their jurisdictional authority beyond their geographic boundaries).

14. 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

15. See *infra* notes 41-51, 58-69 and accompanying text.

dants, to a class action judgment. Unlike other decisions of this genre,¹⁶ however, the *Miner* court concluded that as long as nonresidents are notified of the action and their interests are adequately protected by party representatives, these individuals may be included in the plaintiff class irrespective of traditional limitations on state jurisdictional authority.¹⁷

BACKGROUND

Because most consumer class actions have been effectively barred from the federal forum, state courts hear such suits with increasing frequency.¹⁸ Generally, the procedural obstacles for maintaining such suits in state courts are less troublesome than those encountered in the federal system.¹⁹ Despite the procedural advantages that may be realized by maintaining a class action in state court, the judgment will not be accorded full faith and credit in sister states unless the court establishes jurisdiction over the parties.²⁰

A substantial body of case law has evolved concerning the jurisdictional prerequisites that must be met to secure jurisdiction over nonresident defendants. A dispute has arisen, however, in regard to whether these same

16. *E.g.*, *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977) (in contrast to nonclass suits, nonresident plaintiffs in class actions need only receive various due process protections to be bound by a local judgment if the state has a special state interest in adjudicating their claims), *cert. denied*, 434 U.S. 1068 (1978); *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 271 N.W.2d 879 (1978) (although some germane contact must be identified between nonresident defendants and the forum in order for these individuals to be personally subject to the court's jurisdiction, nonresident plaintiffs in a class suit may be included as members of the plaintiff class despite their lack of contact with the forum).

17. 87 Ill. 2d at 15, 428 N.E.2d at 482-83 (1981).

18. *See Delle Donne & Van Horn, supra* note 2, at 462-63; Tornquist, *supra* note 1, at 46.

19. *See Snyder v. Harris*, 394 U.S. 332, 341 (1969) (diversity suits involving state law issues best entertained in state courts). Some states that have adopted liberal versions of the federal rules may have class action procedures so efficacious that actions similar to those attempted in *Snyder v. Harris*, 394 U.S. 332 (1969), and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), could theoretically be entertained in their courts. Note, *Multistate Plaintiff Class Actions: Jurisdiction and Certification*, 92 HARV. L. REV. 718, 718-19 & n.9 (1979) [hereinafter cited as *Multistate Plaintiff Class Actions*]. There is no jurisdictional amount requirement to contend with at the state trial court level. Fisch, *supra* note 5, at 178. In addition, Illinois and three other states have enacted streamlined class action statutes that explicitly reject the strict personal notice requirement imposed by *Eisen* on federal class suits seeking pecuniary relief. *See* ILL. REV. STAT. ch. 110, § 57.4 (1979); N.D. R. CIV. P. 23(g)(4); N.Y. CIV. PRAC. LAW § 904 (McKinney 1976); PA. R. CIV. P. 1712.

20. Prior to adoption of the fourteen amendment, it was well established that judgments purporting to dispose of personal or property interests would not be enforced outside the forum if jurisdiction over the property or the parties had not initially been secured. *See D'Arcy v. Ketchum*, 52 U.S. (11 How.) 165 (1850). The rule remained unchanged as due process limitations on state jurisdictional authority evolved. *See Pennoyer v. Neff*, 94 U.S. 714, 729-33 (1877); C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 4467 (1969).

It must be noted that the legal interests of unnamed class members are affected by any class action properly brought on their behalf which results in a final adjudication. Irrespective of the outcome of such a suit, those included in the plaintiff class will be barred from relitigating the suit in another forum. M. GREEN, *BASIC CIVIL PROCEDURE* 241-42 (1979).

jurisdictional requirements must be satisfied to bind nonresident plaintiffs to a class action adjudication of their interests.²¹ To understand the controversy, it is instructive to examine the jurisdictional principles involved in determining when jurisdiction can be secured over a nonresident defendant.

*The Minimum Contacts Legacy of
International Shoe and Shaffer*

As a consequence of the residual sovereignty each state exercises in the federal scheme, state courts historically have confined their power to adjudicate controversies to objects or persons physically present within their boundaries.²² Endorsed by the Supreme Court more than a century ago in *Pennoyer v. Neff*,²³ this territorial imperative eventually spawned unfair results as radical improvements in transportation, commerce, and communication repudiated the notion that only persons or things physically present within the confines of a state's borders were so sufficiently related with the forum that jurisdiction could be exercised over them.²⁴

As the cosmopolitan character of American society escalated, the traditional territorial limitations imposed upon the exercise of personal jurisdiction were relaxed, and state courts began to reach outside their forum to adjudicate the increasingly common disputes involving foreign defendants.²⁵

21. Compare *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 362 A.2d 1177 (App. Div. 1976) (requirements for securing jurisdiction over nonresidents in class actions are identical, irrespective of their status as plaintiffs or defendants) with *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977), cert. denied, 434 U.S. 1068 (1978) (plaintiff class members may be bound by state court determination of their interests even though conditions may be insufficient to secure binding jurisdiction over nonresident defendants).

22. See *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977); *Hanson v. Denckla*, 357 U.S. 235, 249-50 (1958). If a court's jurisdiction is based on the power it has to render the defendant personally liable to plaintiff, the action is designated in personam. In contrast, if a court's jurisdictional authority in a given case only encompasses property located within the territorial confines of the forum, the action is designated in rem or quasi in rem. Any judgment awarded plaintiff in actions in rem or quasi in rem may be satisfied only by distribution of the property which initially provided the jurisdictional basis. Moreover, since the property owner is not before the court, the court cannot hold the defendant personally liable. Note that while an action in rem affects the interests of all persons in certain property, an action quasi in rem only affects the interests of named parties in particular property. See *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977). For a general discussion of all three types of jurisdiction, see Note, *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909, 935-65 (1960).

23. 95 U.S. 714, 720 (1877).

24. See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957). The *McGee* Court elaborated on the substantial role technology has played in the evolution of state jurisdictional authority. It should be pointed out that corresponding to the heightened national character of commercial activity, improvements in transportation and communication have made it far less burdensome for an individual to defend himself in a foreign jurisdiction with which he has been affiliated. *Id.* at 223.

25. See, e.g., *Hess v. Pawloski*, 274 U.S. 352 (1927). In *Hess*, the Court upheld a Massachusetts statute which appointed a state official as an agent for service of process for all nonresident motorists involved in accidents within the state, thereby subjecting these nonresidents to the state's jurisdiction. Because nonresident motorists could theoretically be ex-

By 1945, the Court had established that to determine whether a state court may make a binding in personam²⁶ judgment over a nonresident defendant, the primary inquiry concerned whether assertion of jurisdiction was both fair and reasonable rather than discerning whether the defendant was merely physically present within the geographical borders of the state.²⁷ In *International Shoe v. Washington*,²⁸ the Court stated that what was fair and reasonable would be determined by an objective standard; nonresidents who had certain "minimum contacts" with the forum such that maintenance of the suit did not offend traditional concepts of due process would be considered personally subject to the jurisdiction of the forum court.²⁹

Following *International Shoe*, the inquiry concerning state authority to establish jurisdiction over nonresident defendants shifted dramatically. The Supreme Court's preoccupation with the mutually exclusive sovereignty of the states³⁰ was superseded by an emphasis on the extent to which the defendant, the litigation, and the forum were interrelated.³¹ In *Shaffer v. Heitner*,³² the Court emphasized that adherence to this tripartite scheme mandated that actions in rem³³ as well as in personam be governed by *International Shoe's* minimum contacts doctrine.³⁴ Consequently, the presence of property within the forum was no longer independently sufficient to afford the court jurisdiction to attach such property. Rather, property within the state could only be attached if it bore such a significant relationship to both the subject matter of the suit and the forum that the court's exercise of jurisdiction over it would not offend due process.³⁵

Subsequent decisions of the Supreme Court have proclaimed the continued vitality of the minimum contacts doctrine enunciated in *International Shoe* and *Shaffer*, but always in the context of litigation directed against a nonresident defendant who challenges the forum state's authority to subject either his person or property to jurisdiction.³⁶ Thus, the Supreme Court has

cluded from Massachusetts highways, the Court reasoned that by using the state's roads, these individuals had constructively consented to appoint an agent for service of process within the jurisdiction. *Id.* at 356-57.

26. See *supra* note 22.

27. See *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

28. *Id.*

29. *Id.* at 316.

30. See *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877). For a discussion of *Pennoyer*, see *supra* note 23 and accompanying text.

31. See *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

32. 433 U.S. 186 (1977).

33. See *supra* note 22.

34. 433 U.S. at 209, 212 (1977).

35. *Id.* at 209.

36. Theoretically, the *Shaffer* Court extended the scope of the minimum contacts doctrine to include class suits involving nonresident plaintiffs when it declared that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." 433 U.S. at 212. It can be argued, however, that three years after *Shaffer*, the Court, in *Rush v. Savchuk*, 444 U.S. 320, 327 (1980), qualified this language as applicable solely to manifestation of jurisdiction over nonresident defendants. *Rush* concerned

never specifically addressed the issue of whether the minimum contacts criteria must be satisfied where plaintiffs, rather than defendants, are sought to be bound by a foreign state court judgment. A few courts have argued, however, that the Supreme Court has implied that it is unimportant to discern minimum contacts between foreign plaintiffs and the forum in order to bind these nonresidents to class adjudications of their claims.

*State Interest and Minimum Contacts
in the Absent Plaintiff Context*

Generally, a person who is before the court but is not a named party will not be bound by the court's judgment.³⁷ Persons included in the plaintiff class in a representative action, however, may be bound by the judgment even though they are outside the jurisdiction of the court.³⁸ This distinction between class and nonclass suits was endorsed by the Supreme Court in *Hansberry v. Lee*.³⁹ It was this endorsement that spawned the dispute con-

the issue of whether an insurer's duty to defend a nonresident policyholder could be characterized as a contingent debt subject to the quasi in rem jurisdiction of a state in which the insurer did business. *Id.* at 322. See *supra* note 22. The *Rush* Court held that permitting jurisdiction in such circumstances would violate the minimum contacts requirements of *International Shoe* and *Shaffer*. 444 U.S. 320, 327-33 (1980). In concert with *Rush*, the Court reaffirmed the sovereign right of state courts to hear suits arising within the borders of the state in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). The *World-Wide* Court held that concomitant with this right, under the minimum contacts doctrine, states could not secure jurisdiction over nonresident defendants who had not purposefully availed themselves of the benefits of the state's laws in such a manner that they could reasonably anticipate being haled into the state's courts. *Id.* at 297.

37. See *Hansberry v. Lee*, 311 U.S. 32, 40-42 (1940).

38. *Id.* See *Frank v. Teachers Ins. & Annuity Ass'n*, 71 Ill. 2d 583, 592, 376 N.E.2d 1377, 1380 (1978); *Newberry Library v. Board of Educ.*, 387 Ill. 85, 90, 55 N.E.2d 147, 150 (1944); Comment, *Class Actions and the Illinois Consumer*, 4 J. MAR. J. PRAC. & PROC. 217, 226-27 (1971). See also, 3B J. MOORE, MOORE'S FEDERAL PRACTICE § 23.11[5] (2d ed. 1981) (fact that members of class are beyond territorial limits of court is immaterial as to binding effect of judgment); RESTATEMENT (SECOND) OF JUDGMENTS § 41(2) (1980) (person represented by party to action is bound by judgment even though person does not have notice of action, is not served with process, or is not subject to service of process).

39. 311 U.S. 32 (1940). In dicta, the *Hansberry* Court remarked:

To these general rules [concerning personal jurisdiction] there is a recognized exception that, to an extent not precisely defined by judicial opinion, the judgment in a "class" or "representative" suit, to which some members of the class are parties, may bind members of the class or those represented who were not made parties to it . . . [or] are not within the jurisdiction. . . . In such cases where the interests of those not joined are of the same class as the interests of those who are, and where it is considered that the latter fairly represent the former . . . the court will proceed to a decree.

Id. at 41-42. Class action advocates argue that the above language demonstrates that as long as nonresident plaintiff absentees are adequately represented, they cannot assert that they are not bound by the judgment of the adjudicating court. See Forde II, *supra* note 11, at 133; Note, *Toward a Policy-Based Theory of State Court Jurisdiction Over Class Action*, 56 TEX. L. REV. 1033, 1045, 1048-49 (1978) [hereinafter cited as *State Court Jurisdiction*]. In response, skeptics maintain that *Hansberry* should not be so liberally construed because it did not in-

cerning the propriety of employing a minimum contacts approach to ascertain whether nonresident plaintiffs may be bound by state class action judgments.⁴⁰ Essentially, the controversy is focused on whether a class suit is to be considered merely a procedural device wholly incapable of expanding the territorial confines of a state's sovereignty, or whether the unique nature of class suits warrants utilization of a constitutional standard different than that historically thought necessary to establish jurisdiction over nonresidents.

Some authorities assert that the *Hansberry* decision stands for the proposition that as long as a special state interest exists to adjudicate nonresident claims, an absent plaintiff who has no contacts with the forum may be bound by a judgment rendered there provided that various procedural due process protections⁴¹ are afforded.⁴² Courts adopting this view emphasize that policy considerations underlying the utilization of the class action mechanism support such an interpretation.⁴³

volve a representative action and "its broad pronouncements of the requirements of due process in class actions are rank dicta." Maraist & Sharp, *Federal Procedure's Troubled Marriage: Due Process and the Class Action*, 49 TEX. L. REV. 1, 6 (1970) [hereinafter cited as Maraist & Sharp].

40. Compare *Impact*, *supra* note 2, at 1011 (discerning minimum contacts between plaintiff class members and forum important in determining whether absentees bound by local judgment) with *Consumer Class Actions*, *supra* note 6, at 1432-33 (utilization of minimum contacts analysis irrelevant in ascertaining whether absentees may be certified as members of plaintiff class).

41. See *infra* notes 48-49 and accompanying text.

42. See *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 542-43, 567 P.2d 1292, 1305-06 (1977), *cert. denied*, 434 U.S. 1068 (1978); Ross, *supra* note 1, at 409, 412; *Consumer Class Actions*, *supra* note 6, at 1432-33. See generally ILL. INST. FOR CONTINUING LEGAL EDUCATION, CLASS ACTIONS § 8.15 (1979).

43. Because the purpose of a class suit is to conserve judicial resources by redressing the injuries sustained by a large number of similarly situated individuals in a single proceeding, territorial restrictions on joinder of plaintiff class members inhibit class suits from realizing their full potential. See Ross, *supra* note 1, at 421. There are additional arguments for construing the *Hansberry* decision broadly and distinguishing class suits from other actions for jurisdictional purposes.

Unlike class representatives, absentees bear none of the risks of maintaining the suit. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 726-27. In the event the court renders a judgment adverse to their interests, absentees cannot be subjected to counterclaims or court costs because they are not parties. Cf. *Donson Stores, Inc. v. American Bakeries Co.*, 58 F.R.D. 485, 488-89 (S.D.N.Y. 1973) (defendant cannot counterclaim against individual class members until these individuals either appear and claim interest in recovery or defendant manages to bring defendant class action against entire plaintiff class). Moreover, fairness concerns suggest the inappropriateness of applying minimum contacts criterion in the context of plaintiff class actions. In contrast to a defendant who is subject to suit in a foreign state, an absentee class member is adequately represented and need not travel to the forum to protect his interests. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 727. Further, in consumer class suits, the nonresident plaintiff's interest in the litigation will be de minimus, see McCall, *Due Process and Consumer Protection: Concepts and Realities in Procedure and Substance—Class Action Issues*, 25 HASTINGS L.J. 1351, 1392 (1974), and unless procedural due process protections prove inadequate, the absentee's interests will be vigorously promoted by the class representatives. See Forde II, *supra* note 11, at 127.

The Kansas Supreme Court, in *Shutts v. Phillips Petroleum Co.*,⁴⁴ was the first court to legitimize this interpretation of the *Hansberry* decision. *Shutts* involved a class action suit filed to recover lost interest earned on overdue royalties attributed to natural gas produced from mineral leases in a three state area. The majority of the leases concerned mineral rights located within Kansas,⁴⁵ although most members of the plaintiff class were nonresidents.⁴⁶ In its opinion, the Kansas court declared that because representative suits, by definition, proceed to judgment despite the absence of most class members, the multistate composition of the plaintiff class was irrelevant in determining whether personal jurisdiction could be established over the entire class.⁴⁷ The relevant factor was the extent to which nonresident plaintiffs were given an opportunity to be heard and were adequately protected by those representing their interests.⁴⁸ Satisfaction of both of these due process guarantees qualified the multistate plaintiff class for certification.⁴⁹ The *Shutts* court cautioned, however, that even though a

Indeed, a distinction can be drawn between the binding effect a judgment may have on a defendant as opposed to a plaintiff class member. While the effect of a judgment against a defendant is to deprive him of property rights protected by the due process clause, see *Developments in the Law—Class Actions*, 89 HARV. L. REV. 1318, 1403-04 (1976) [hereinafter cited as *Developments*], a judgment adverse to the interests of plaintiff class members merely precludes these individuals from relitigating the issues actually decided in the prior action. See RESTATEMENT OF JUDGMENTS § 26 comment a, § 86 comment a (1942); Ross, *supra* note 1, at 412. A judgment adverse to class interests is res judicata only if a collateral attack concerning the adequacy of the class representation proves unsuccessful. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 721-28; Note, *Collateral Attack on the Binding Effect of Class Action Judgments*, 87 HARV. L. REV. 589 (1974). Proponents of class suits contend that the Supreme Court has never held that the right to maintain an action in an individual capacity is a property right protected by the due process clause. See *Developments*, *supra* at 1404. But see Comment, *The Heirs of Boddie: Court Access for Indigents After Kras and Ortwein*, 8 HARV. C.R.-C.L. L. REV. 571, 586-87 (1973). Consequently, class action advocates argue that since the remedy afforded persons participating in representative suits conceivably provides constitutionally sufficient protection of their substantive claims, see, e.g., *Bernheimer v. Converse*, 206 U.S. 516, 532 (1907) (representation by corporation in class suit adequately protects shareholders interests), due process hardly seems offended if a court seeks to bind nonresident plaintiffs who have already received one chance to litigate their claims. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 728; *State Court Jurisdictions*, *supra* note 39, at 1044-45 & n.67.

44. 222 Kan. 527, 567 P.2d 1292 (1977), cert. denied, 434 U.S. 1068 (1978).

45. *Id.* at 557, 567 P.2d at 1314.

46. Of approximately 6,400 plaintiff class members, 218 were Kansas residents. *Id.* at 532, 541, 567 P.2d at 1298, 1304.

47. *Id.* at 542, 567 P.2d at 1305.

48. *Id.* The *Shutts* court concluded that although the necessary element to securing jurisdiction over nonresident defendants is some minimum contact between the defendant and the forum, the necessary element to establishing personal jurisdiction over nonresident plaintiffs in a class action is compliance with the dual elements of procedural due process—notice and adequate representation. *Id.* at 542-43, 567 P.2d at 1305.

49. *Id.* The components of procedural due process identified in *Shutts* are derived from three Supreme Court opinions. In *Grannis v. Ordean*, 234 U.S. 385, 394 (1914), the Court held that a party's opportunity to be heard was a fundamental requisite of due process. The Court recognized in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950),

multistate class suit satisfied the dual requirements of procedural due process, the suit might not be entertained if the state had no special interest in hearing the suit.⁵⁰ The Kansas court certified the multistate plaintiff class in *Shutts* because it found that the majority of gas leases were located within the forum, and thus, the state had a special interest in adjudicating the nonresident claims.⁵¹

In contrast to *Shutts*, other authorities have stressed that despite the Court's language in *Hansberry v. Lee*, the key determinant of whether nonresident absentees can be included as members of the plaintiff class is the extent to which the absentees are affiliated with the forum.⁵² This was

however, that absent an opportunity to receive notice of an action, a party would be deprived of his fundamental right to be heard. Consequently, the *Mullane* Court held that notice, calculated to apprise parties of the pendency of the action was a fundamental requirement of due process. *Id.* at 314. *Mullane* was not a class action, however, and absentee plaintiffs in class suits are not named parties to the actions. Prior to *Mullane*, the Court had held in *Hansberry v. Lee*, 311 U.S. 32, 44-45 (1940), that adequate representation of absentee plaintiffs' interests was a due process prerequisite to maintenance of a class action. A few courts have held that, taken together, *Hansberry* and *Mullane* mandate that the greater the degree of similarity among absentee and representative interests, the less important it is for all identifiable class members to receive personal notice. See, e.g., *Frank v. Teachers Ins. & Annuity Ass'n*, 71 Ill. 2d 583, 593, 376 N.E.2d 1377, 1381 (1978); *Hoover v. May Dep't Stores Co.*, 62 Ill. App. 3d 106, 118-20, 378 N.E.2d 762, 772-74 (5th Dist. 1978).

In attempting to delineate the due process implications of *Mullane* and *Hansberry* on class actions, two authors arrived at a similar conclusion. They stressed that even without actual notice and a corresponding opportunity to participate in a class suit, due process may nevertheless be satisfied if:

- (1) there is a compelling state interest to adjudicate the suit, or
- (2) the interests of absentees are adequately represented by named class members and either
 - (a) the absentees expressly or impliedly "consented" to be represented by the named parties, or
 - (b) adjudication of the absentee claims will further a special state interest and issuance of notice would make maintenance of the suit impracticable.

Maraist & Sharp, *supra* note 39, at 9. But see *infra* note 90.

50. *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 550, 557, 567 P.2d 1292, 1310, 1314-15 (1977), cert. denied, 434 U.S. 1068 (1978). The *Shutts* court referred to *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 862 A.2d 1177 (App. Div. 1976), as an example of a factual situation in which a court should refuse to certify a multistate plaintiff class. 222 Kan. at 557, 567 P.2d at 1314. The facts in *Feldman* significantly differed from those in *Shutts*. First, unlike *Shutts*, the *Feldman* court had no special interest in adjudicating the suit on behalf of a multistate class. *Id.* at 550, 567 P.2d at 1310. Second, while the plaintiff class in *Feldman* was comprised of individuals living in numerous states, only residents of three jurisdictions were involved in the *Shutts* litigation. *Id.* at 545, 550, 567 P.2d at 1307, 1310. Third, *Shutts* was distinguishable from *Feldman* because, in contrast to the New Jersey situation, Kansas was the only state in the *Shutts* case where the statute of limitations had not elapsed. The Kansas court reasoned that maintenance of a multistate class suit would toll the statute of limitations on behalf of nonresident class members who otherwise would be unable to obtain relief. *Id.* at 545, 567 P.2d at 1307.

51. *Id.* at 557-58, 567 P.2d at 1314-15.

52. See *Spirek v. State Farm Mut. Auto. Ins. Co.*, 65 Ill. App. 3d 440, 453, 382 N.E.2d 111, 120 (1st Dist. 1978); *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 89-94, 362 A.2d

the position taken in *Feldman v. Bates Manufacturing Co.*,⁵³ where the Appellate Division of the New Jersey Superior Court emphasized that absent "affiliating circumstances," such as when nonresidents share in a common fund located within the forum, state courts could not assert personal jurisdiction over nonresident plaintiff class members unless the state maintained a special interest in assuming the burden of adjudicating their claims.⁵⁴ Because the defendant in *Feldman* had no assets within the forum

1177, 1179-82 (App. Div. 1976); Fisch, *supra* note 5, at 209, 212; Vestal & Scher, *Uniform Class Actions: A Critical View*, 63 A.B.A. J. 837, 842 (1977); *Multistate Plaintiff Class Actions*, *supra* note 19, at 723-25.

Prior to *Miner*, in instances where no special state interest in adjudicating nonresident claims exists, it was uniformly required that absent plaintiffs in class suits have minimum contacts with the forum in order to be bound by a local adjudication of their interests. Some commentators argue that those who claim procedural due process is a substitute for minimum contacts in the class action context have failed to address the territorial issue in light of jurisdictional concerns. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 729. These commentators believe territorial restrictions are more than just primitive means of protecting against imposition of burdensome litigation. *Id.* They emphasize that prior to adoption of the fourteenth amendment, territorial restrictions alone governed whether state judgments received full faith and credit in sister states. See *D'Arcy v. Ketchum*, 52 U.S. (11 How.) 165 (1850). Despite the fact that subsequent to the amendment's ratification due process concerns for ensuring fairness to the litigants have gradually become an important factor in ascertaining whether jurisdiction over absent parties can be secured, see *supra* notes 24-35 and accompanying text, many authorities believe territoriality necessarily plays a significant part in every inquiry concerning state jurisdictional authority because states are still residually sovereign entities in the federal scheme. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 729. *Cf.* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293-94 (1980) (it would be inconsistent with constitutional principles of interstate federalism to hold that state lines are irrelevant in delineating state jurisdictional authority). Consequently, it has been suggested that minimum contacts be viewed not as a wholesale disavowal of territorial imperatives, but merely as a more sensible alternative than "presence" for implementing due process concerns. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 729. See also, RESTATEMENT (SECOND) OF JUDGMENTS § 4, reporter's note at 63 (1980) (real issue is not whether jurisdictional concept is territorial but whether conception of territorial authority should be formulated in physical or mechanical terms).

Moreover, the Uniform Class Action Act [hereinafter cited as Act], promulgated in part to facilitate the ability of state courts to hear representative suits involving nonresident claims, see UNIF. CLASS ACTION ACT, prefatory note, 12 U.L.A. 20 (Supp. 1982), does not challenge the propriety of demonstrating minimum contacts between the forum and all nonresident plaintiffs to validly bind these individuals to a local judgment. See *Miner v. Gillette Co.*, 87 Ill. 2d 7, 22, 428 N.E.2d 478, 486 (1981) (Ryan, J., dissenting); *Multistate Plaintiff Class Actions*, *supra* note 19, at 722. Rather, the Act seeks to harmonize territoriality with the necessity of entertaining class suits of a multistate character. It provides that if no minimum contacts exist, a state may establish jurisdiction over any nonresident whose home state has reciprocal statutory jurisdictional authority over residents of the forum. UNIF. CLASS ACTION ACT § 6, 12 U.L.A. 24 (1976). Thus, whether the Act will significantly increase the number of state courts that hear class suits involving nonresident plaintiffs is dependent on the number of states in which it is eventually adopted. See Moore, *Uniform Class Action Act: Does it Go Far Enough?*, 63 A.B.A. J. 837, 844 (1977). Presently, only North Dakota has adopted the Act's reciprocal jurisdictional provision. See N.D.R. Civ. P. 23(f).

53. 143 N.J. Super. 84, 362 A.2d 1177 (App. Div. 1976).

54. *Id.* at 90-92, 362 A.2d at 1180-81. A few courts have denied certification of a national

and was not licensed to do business in the state,⁵⁵ and because the great majority of those sought to be included in the plaintiff class were nonresidents who had no germane contact with the forum,⁵⁶ the court refused to certify the nonresident plaintiff class.⁵⁷

Two years after *Feldman*, however, the Wisconsin Supreme Court adopted the *Shutts* approach in *Schlosser v. Allis-Chalmers Corp.*⁵⁸ In *Schlosser*, a multistate class of retired employees sued their employer for breach of its contractual obligation to provide free life insurance benefits to class members older than sixty-five. The Wisconsin court stated that it was inappropriate to utilize a minimum contacts approach to determine whether the nonresident plaintiff class members could be bound by a local adjudication of their interests.⁵⁹ Rather, the court maintained that as long as nonresident plaintiffs received due process protections and the state had a special interest in adjudicating their claims, the nonresidents could be certified as members of the plaintiff class.⁶⁰

The Wisconsin court identified a substantial state interest in adjudicating the nonresident claims.⁶¹ Unlike the situation in either *Shutts* or *Feldman*, the defendant in *Schlosser* not only maintained its corporate headquarters in the forum,⁶² but the majority of class members lived within the forum state as well.⁶³ Furthermore, the *Schlosser* court emphasized that the disputed contract provision originated in the defendant's Wisconsin office.⁶⁴ Consequently, despite the fact that the remainder of the plaintiff class were

plaintiff class on slightly different territorial grounds. See, e.g., *Klemow v. Time, Inc.*, 466 Pa. 189, 352 A.2d 12 (1976), cert. denied, 429 U.S. 828 (1977). *Klemow* was a class action for specific performance brought on behalf of Life Magazine subscribers to compel the near bankrupt magazine to continue publishing until all class member subscriptions had expired. The court summarily stated that because the jurisdiction of the commonwealth courts was territorially limited, only residents or nonresidents submitting themselves to the court's jurisdiction could be included in the plaintiff class. *Id.* at 197 n.15, 352 A.2d at 16 n.15. See also *Reardon v. Ford Motor Co.*, 7 Ill. App. 3d 338, 287 N.E.2d 519 (3d Dist. 1972) (court refused to certify a multistate plaintiff class consisting of four million Ford automobile owners whose vehicles were allegedly equipped with defective suspension systems). Because each transaction that culminated in the purchase of a vehicle would have its own unique history, and because various defenses as well as procedural and evidentiary questions would vary nationwide, the *Reardon* court held that the representative parties should not be allowed to litigate the claims of nonresident absentees who might wish to seek relief in their home forum. *Id.* at 344, 287 N.E.2d at 524.

55. 143 N.J. Super. 84, 92, 362 A.2d 1177, 1181 (App. Div. 1976).

56. Of the 295 individuals sought to be included in the plaintiff class, only 32 were New Jersey residents. *Id.* at 88, 362 A.2d at 1179.

57. *Id.* at 94, 362 A.2d at 1182.

58. 86 Wis. 2d 226, 271 N.W.2d 879 (1978).

59. *Id.* at 242, 271 N.W.2d at 887.

60. *Id.* at 241-43, 271 N.W.2d at 886-87.

61. *Id.*

62. *Id.* at 242-43, 271 N.W.2d at 887.

63. *Id.* at 239, 271 N.W.2d at 885. Of the 562 members of the plaintiff class, 323 were Wisconsin residents. *Id.*

64. *Id.* at 240-41, 271 N.W.2d at 886.

residents of twenty-three foreign jurisdictions who had no contact with the forum,⁶⁵ the court asserted that adjudication of their interests in a Wisconsin forum would receive full faith and credit in sister states.⁶⁶

The varied positions of the state courts illustrate the division of authority concerning what significance, if any, minimum contacts should play in the process of certifying a multistate plaintiff class. Until recently, all states subscribed to the proposition that a special state interest must exist for a state to adjudicate the interests of nonresident absentees who have no germane affiliation with the forum. In 1981, however, the Illinois Supreme Court rejected this proposition in *Miner v. Gillette Co.*, holding that compliance with procedural due process was all that was constitutionally required to certify a multistate plaintiff class in a state class action proceeding.⁶⁷

FACTS AND PROCEDURE

In April 1978, the Gillette Company, a Delaware corporation headquartered in Massachusetts⁶⁸ and licensed to do business in Illinois,⁶⁹ initiated a national campaign to promote sales of its "Cricket" brand disposable butane lighters.⁷⁰ In various advertisements, Gillette offered "Accent" brand table lighters to persons submitting proof of purchase of two Cricket lighters, along with fifty cents for postage and handling.⁷¹ Nearly 500,000 people sent for the Accent lighters, but Gillette was unable to fill approximately 180,000 of the orders.⁷²

Steven Miner, one of nearly 12,000 Illinois residents who failed to receive an Accent lighter after responding to Gillette's offer,⁷³ filed a two-count class action suit in the Circuit Court of Cook County, alleging that the company's failure to comply with the terms of its unconditional offer constituted both a breach of contract⁷⁴ and a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.⁷⁵ Miner not only sought

65. *Id.* at 239, 271 N.W.2d at 885.

66. *Id.* at 242 & n.3, 271 N.W.2d at 887 & n.3.

67. 87 Ill. 2d 7, 15-16, 428 N.E.2d 478, 482-83 (1981).

68. *Id.* at 24, 428 N.E.2d at 487 (Ryan, J., dissenting).

69. Appellant's Petition for Leave to Appeal at 21, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

70. Brief for Appellee at 8, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

71. Plaintiff's Amended Complaint, ¶ 4, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

72. 87 Ill. 2d at 11, 428 N.E.2d at 480. Gillette sent a written apology to all who applied for, but failed to receive, an Accent lighter. *Id.* at 15, 428 N.E.2d at 482. In addition, the company mailed each applicant a Cricket lighter in consolation. *Id.*

73. *Id.* at 22, 428 N.E.2d at 486.

74. *Id.* at 10, 428 N.E.2d at 480.

75. *Id.* See Consumer Fraud and Deceptive Business Practices Act, §§ 1-12, ILL. REV. STAT. ch. 121½, §§ 261-272 (1979). Enacted in 1961 and amended in 1973, the Consumer Fraud Act gave Illinois consumers an unprecedented right to sue those doing business within the state for various fraudulent practices. In the instant case, Miner asserted that although Gillette knew it

redress on behalf of all Illinois residents allegedly injured by Gillette's promotion, but also on behalf of all individuals similarly injured nationwide.⁷⁶ Few of the nonresidents sought to be included in the action had minimum contacts with Illinois in respect to the subject matter of the suit,⁷⁷ and Gillette strenuously denied that a class action comprised of multistate plaintiffs could be entertained in such circumstances. In the absence of minimum contacts between nonresident absentees and the forum, Gillette reasoned that not only would Illinois have no interest in adjudicating the claims of nonresident class members, but that any judgment rendered by the Illinois tribunal would have no binding effect outside the state's borders.⁷⁸

Acknowledging these arguments, the circuit court entered an interlocutory order limiting the plaintiff class solely to Illinois residents.⁷⁹ In accordance with one of its previous decisions,⁸⁰ the Appellate Court for the First Judicial District affirmed the circuit court order.⁸¹ Subsequently, the Illinois Supreme Court reversed the circuit court order holding that denial of class certification to nonresident plaintiffs was improper.⁸²

REASONING OF THE COURT

At the outset, the Illinois Supreme Court ruled that different constitutional considerations govern a court's ability to secure jurisdiction over

had an insufficient supply of Accent lighters to meet the anticipated demand, it fraudulently induced the plaintiff class to purchase thousands of Cricket lighters by fostering the belief that an adequate supply of the lighters was available. See Appellant's Petition for Leave to Appeal at 20, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

76. Plaintiff's Amended Complaint, ¶ 9, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981). Gillette submitted a supplemental affidavit illustrating the breakdown, by state, of all who applied for, but failed to receive an Accent lighter. The breakdown demonstrated that Illinois residents comprised 6.5% of the total number of individuals allegedly injured by Gillette's promotion nationwide. See Supplemental Affidavit, Corrections to Answers to Plaintiff's First Set of Interrogatories, Exhibit A, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 487 (1981). More injured class members lived in California than Illinois. Moreover, almost as many Texas and New York residents were injured as were Illinois residents. *Id.*

In Massachusetts, where Gillette maintained its corporate headquarters, about 4,000 people failed to receive lighters that they had applied for. In Minnesota, the state where Gillette had directed all monies solicited to be sent, approximately 2,000 individuals did not receive Accent lighters. Nearly 700 persons unsuccessfully responded to Gillette's promotion in Delaware, the state in which Gillette was incorporated. *Id.* See *infra* text accompanying notes 106-10.

77. 87 Ill. 2d at 12, 428 N.E.2d at 481.

78. See Brief for Appellee at 22, 30, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981). Moreover, Gillette claimed that approval of a national plaintiff class would cause the case to be virtually unmanageable because the court would have to undertake the burdensome task of evaluating the company's liability in light of the particular contract and consumer protection laws in each of the 50 states. *Id.* at 22-26.

79. *Miner v. Gillette Co.*, 79 CH 567 (Cir. Ct. Cook County) (Order of Sept. 17, 1979).

80. See *Spirek v. State Farm Mut. Auto. Ins. Co.*, 65 Ill. App. 3d 440, 382 N.E.2d 111 (1st Dist. 1978) (certification denied nonresident absentees lacking minimum contacts with the forum in respect to the subject matter of the suit).

81. *Miner v. Gillette Co.*, 89 Ill. App. 3d 315, 319, 411 N.E.2d 1092, 1096 (1st Dist. 1980).

82. 87 Ill. 2d at 20, 428 N.E.2d at 485.

nonresident plaintiffs, as opposed to nonresident defendants in class suits.⁸³ Specifically, the *Miner* court endorsed the Kansas Supreme Court's view that although the necessary ingredient to obtaining in personam jurisdiction over a nonresident defendant is the existence of some minimum contact between the defendant, the litigation, and the forum, in a class action the existence of such contact to garner jurisdiction over a nonresident plaintiff was not essential.⁸⁴ The *Miner* court reasoned that this distinction was warranted because class suits are an anomaly within the American judicial scheme. Unlike plaintiffs in a nonclass action, absent plaintiffs in a class action may obtain relief even though they do not appear before the court. Based on this difference, the court argued that there was little reason to distinguish between resident and nonresident plaintiffs on a territorial, minimum contact basis.⁸⁵ The Illinois court liberally interpreted the *Hansberry*⁸⁶ decision which had recognized that unique standards govern assertion of jurisdiction over absentee class members in representative suits.⁸⁷

The Illinois court opined that recognition of the distinction between class and nonclass actions with respect to plaintiffs necessitates a reevaluation of the procedural due process guarantees of fairness that govern the ability of a state to exercise in personam jurisdiction over absent individuals. The *Miner* court reasoned that, while fairness to a nonresident defendant required that there be some germane contact with the forum in order to be haled into court, fairness to a nonresident plaintiff in a class suit simply required that the nonresident receive sufficient notice of the action and that the class representatives adequately represent the absent plaintiff's interests.⁸⁸

In its analysis, the *Miner* court found that these procedural due process guarantees were readily satisfied by the nonresident plaintiff class. Adequate representation was apparently not threatened because the claims of

83. *Id.* at 12, 428 N.E.2d at 481.

84. *Id.* at 12-14, 428 N.E.2d at 481-82. The court relied on *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 241-42, 271 N.W.2d 879, 886-87 (1978) (compliance with procedural due process eliminates need to utilize minimum contact approach in determining whether multistate plaintiff class may be certified), as further support for this contention.

85. 87 Ill. 2d at 14, 428 N.E.2d at 482. The *Miner* court stressed that employment of the class action mechanism was predicated on the judiciary's inability to hear the claims of all class members individually as well as the impracticality of requiring all class members to individually prosecute their claims. Because the purpose underlying utilization of the class action device is judicial efficiency, the court reasoned that requiring absent class members to have contact with the forum, despite the fact that those persons may never appear personally to share in the recovery, would nonsensically frustrate the efficiency of maintaining such suits. *Id.* As one commentator urged, to hold otherwise would be to toss the "substantive baby out of court with the procedural bathwater." Ross, *supra* note 1, at 427. *But see infra* notes 99-104 and accompanying text.

86. *Hansberry v. Lee*, 311 U.S. 32, 41-42 (1940).

87. 87 Ill. 2d at 13-14, 428 N.E.2d at 481-82. For the specific passage in *Hansberry* upon which the *Miner* court anchored its decision, see *supra* note 39.

88. 87 Ill. 2d at 14, 428 N.E.2d at 482.

the nonresident plaintiffs were identical to those of their Illinois counterparts.⁸⁹ In addition, because Gillette knew the name and address of each plaintiff, the court reasoned that all plaintiffs could receive notice of the impending action.⁹⁰ The court emphasized that as long as the due process requirements of notice and representation were met, a judgment in a multi-state class action would be honored in other states under the full faith and credit clause of the United States Constitution,⁹¹ thereby, binding all class members who did not affirmatively drop out of the class.⁹² Provided that the plaintiffs could satisfy the statutory criteria for maintaining a class action,⁹³ the court concluded that compliance with procedural due process

89. *Id.* at 15, 428 N.E.2d at 482.

90. *Id.* Nevertheless, the *Miner* court implied that lack of notice would not always defeat multistate class suits. Although the court said individual notice is mandated when the names and addresses of nonresident plaintiff class members are known, "[t]he question of what notice must be given to absent class members to satisfy due process necessarily depends on the circumstances of the individual action." *Id.*

Prior to *Miner*, Illinois was one of only a few states to excuse pretrial or prejudgment notice to absent but identifiable class members. See *Hoover v. May Dep't Stores Co.*, 62 Ill. App. 3d 106, 118-20, 378 N.E.2d 762, 772-74 (5th Dist. 1978), *rev'd on other grounds*, 77 Ill. 2d 93, 395 N.E.2d 541 (1979); *Tornquist*, *supra* note 1, at 74. Further, the Illinois class action statute, enacted in 1977, makes notice discretionary with the court. See ILL. REV. STAT. ch. 110, § 2-803 (1981). Historically, Illinois courts have justified this departure from conventional notice by emphasizing that vigorous prosecution of class claims by representative parties sufficiently protects the interests of absent class members. In general, only if representation appears inadequate will the courts order notice to be made. See *Frank v. Teachers Ins. & Annuity Ass'n*, 71 Ill. 2d 583, 589-96, 376 N.E.2d 1377, 1379-82 (1978); *Forde II*, *supra* note 11, at 131-32. See also *supra* note 49. Other jurisdictions have been more reluctant to waive notice of an action to persons whose interests are being adjudicated, particularly because notice "is the greatest single safeguard against inadequate representation." *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 556, 567 P.2d 1292, 1314 (1977), *cert. denied*, 434 U.S. 1068 (1978) (quoting *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950)). The proposed Uniform Class Action Act, see *supra* note 52, assumes an intermediate position; only those persons whose claims exceed \$100 must receive personal notice of the action. UNIFORM CLASS ACTION ACT. § 7d, 12 U.L.A. 25 (Supp. 1982).

91. U.S. CONST. art. IV, § 1. See 28 U.S.C. § 1738 (1976).

92. 87 Ill. 2d at 15-16, 428 N.E.2d at 483.

93. See ILL. REV. STAT. ch. 110, § 2-801 (1981). The requirements for class action certification in Illinois are:

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
3. The representative parties will fairly and adequately protect the interest of the class.
4. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

Id.

Refuting Gillette's contention that maintenance of a national plaintiff class suit was unmanageable because the multifarious laws of 50 jurisdictions had to be applied to the dispute, see *supra* note 78, the *Miner* court recognized that the Illinois class action statute, ILL. REV. STAT. ch. 110, § 2-802 (1981), provided for grouping of class suits into manageable subclasses. 87 Ill. 2d at 17-18, 428 N.E.2d at 484. The court also found that the statutory provision which

would eliminate any further objection to certification of a national plaintiff class in Illinois.⁹⁴

ANALYSIS AND CRITIQUE

All courts, including those who have asserted that compliance with procedural due process obviates the need for minimum contacts between non-residents and the forum, have stressed that nonresidents will not be bound by a local judgment unless a special state interest exists in adjudicating their claims.⁹⁵ The rationale for this rule is anchored to federalist concerns. As a consequence of the residual sovereignty each state enjoys as a co-equal member of the Union,⁹⁶ state courts are reluctant to usurp the right of another jurisdiction to hear suits arising within its own borders.⁹⁷ Therefore, unless a special state interest in adjudicating nonresident claims is identified, the imposition of extraterritorial jurisdiction may be a constitutional violation of the full faith and credit clause.⁹⁸

requires common questions of fact or law to be the predominating focus of the class action, see ILL. REV. STAT. ch. 110, § 2-801 (1981), was satisfied because the claims of both resident and nonresident plaintiffs were factually identical. 87 Ill. 2d at 17, 428 N.E.2d at 483. The court held that if, on remand, Miner could establish that the differing state laws were subject to being grouped into a manageable number of subclasses so that individual questions of law did not predominate over common questions of fact, the nonresident absentees could be certified as members of the plaintiff class. *Id.* at 18, 428 N.E.2d at 484.

Miner conceded that if a national plaintiff class was certified, the court would have to apply and construe the pertinent laws of each state in which class members lived. See Appellant's Petition for Leave to Appeal at 42, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981). Miner asserted, however, that with the exception of Alabama, the consumer protection and contract law of every state resembled the law of Illinois to a remarkable degree. *Id.*

94. 87 Ill. 2d at 15, 428 N.E.2d 482-83. In a lengthy dissent, in which Justice Underwood joined, Justice Ryan emphasized that in the absence of minimum contacts between the plaintiff class members, the litigation, and the forum, the state must have a special interest in the litigation in order to constitutionally adjudicate the nonresidents' claims. *Id.* at 22, 23, 428 N.E.2d at 486. Justice Ryan also stressed that Illinois was depriving nonresident class members of the right to prosecute their claims in the courts of their home forum, as well as usurping the authority of foreign courts to adjudicate wrongs occurring within their own borders. *Id.* at 23, 27, 428 N.E.2d at 486, 488.

95. See, e.g., *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 550, 557, 567 P.2d 1292, 1310, 1314-15 (1977), cert. denied, 434 U.S. 1068 (1978); *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 240-41, 271 N.W.2d 879, 887 (1978).

96. See U.S. CONST. amend. X. The tenth amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Id.*

97. See, e.g., *Miner v. Gillette Co.*, 87 Ill. 2d 27, 428 N.E.2d 478, 488 (Ryan, J., dissenting) (because Illinois has no interest in bringing nonresident litigation into the state, the court is usurping authority of other jurisdictions to provide a forum for protection of the rights of their citizens); *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 90, 362 A.2d 1177, 1180 (App. Div. 1976) (absent minimum contacts with forum, nonresident plaintiff class cannot be certified unless state's interest in litigation is of sufficient magnitude). Cf. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293-94 (1980) (the sovereign power of state to try cases in its courts acts as an implied limitation on sovereign power of other states, subject only to due process concerns of fairness).

98. See *Shaffer v. Heitner*, 433 U.S. 186, 222-23 (1977) (Brennan, J., concurring in part,

A state court may decide that it has a special interest in adjudicating a controversy on behalf of a multistate class for a number of reasons. For example, if inclusion of nonresidents appears necessary to vindicate the rights of the resident class members, or if the alleged wrong perpetrated on a multistate class originated from within the forum, a state may assert that a special interest is manifest.⁹⁹ It is questionable, however, whether a special state interest exists simply because both resident and nonresident claims have issues in common.¹⁰⁰ A state that applies and construes the laws of a foreign state in such circumstances will be interfering with the foreign state's right to regulate transactions within its own borders solely on grounds of judicial efficiency. Such an interest is insufficient to warrant assertion of adjudicative power over the litigation by one forum, to the exclusion of all other jurisdictions, because in a national class action, all states have similar concerns.¹⁰¹ Moreover, local adjudication of common-question national class actions, when justified primarily for reasons of judicial economy, appears to undermine the Supreme Court's mandate in *Shaffer v. Heitner* that there be a significant relationship between the parties, the forum, and the litigation in order for an adjudication of nonresident interests to be valid.¹⁰² Maintaining that a court can exercise binding jurisdiction over persons unaffiliated with the forum in circumstances where the state has no interest, apart from judicial efficiency, in adjudicating their claims, wholly disregards the forum-litigation link of *Shaffer's* tripartite jurisdictional scheme.¹⁰³ This position suggests that state political integrity is insignificant in the class action context.

dissenting in part) (whether a state can constitutionally assert jurisdiction over particular controversy may depend on whether the state has substantive interest in adjudicating suit). See also *Consumer Class Actions*, *supra* note 6, at 1428, 1443; *Impact*, *supra* note 2, at 1017-18. Cf. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14 (1950) (state's interest in trusts located within forum is constitutionally sufficient to warrant determination of interests of all nonresident beneficiaries).

99. See *Fisch*, *supra* note 5, at 211.

100. *Id.* at 211. RESTATEMENT OF JUDGMENTS § 86, comment f (1942), expressly excluded such common-question class suits from the general rule set forth in § 26 that a representative action may bind individuals who are not subject to the jurisdiction of the court. Corresponding provisions in the RESTATEMENT (SECOND) OF JUDGMENTS §§ 41, 42 (1980), appear to recognize a similar limitation. See 52 *Proceedings*, A.L.I., 345-46 (1975).

101. See *Impact*, *supra* note 2, at 1018-19. Furthermore, other states are likely to exhibit more compelling interests in adjudicating the controversy on behalf of a national plaintiff class than mere judicial economy. For examples of such heightened interests, see *infra* text accompanying notes 106-10. Discounting judicial economy as a special state interest may be warranted by the doctrine of *forum non conveniens*. See *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 95, 362 A.2d 1177, 1183 (App. Div. 1976). See generally RESTATEMENT (SECOND) OF JUDGMENTS § 4 comment g (1980) (court should refuse to entertain action if another forum has substantially greater relationship with parties or litigation).

102. See *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). Although the *Shaffer* Court's reference to this tripartite test was in the context of a nonclass action to establish quasi in rem jurisdiction over a nonresident defendant's property, the Court nevertheless asserted that the test was to govern "all assertions of state-court jurisdiction." *Id.* at 212.

103. A few courts have asserted that for various reasons, see *supra* note 44, a multistate class action can be adjudicated in the absence of a link between nonresident plaintiff class

Such a proposition is unsupported by precedent.¹⁰⁴ Indeed, both the *Shutts* and *Schlosser* courts indicated that a special state interest justified their certification of a multistate plaintiff class.¹⁰⁵ The *Miner* court, however, did not address the issue. This omission suggests that the Illinois court did not recognize the requirement that the state have a special interest in adjudicating the claims of nonresident class members. Had the court attempted to determine whether a special state interest existed, it would have been unable to identify such an interest. In contrast to the situation in *Schlosser*, the vast majority of plaintiff class members in *Miner* lived outside the forum¹⁰⁶ and Gillette's only connection with Illinois was that it had conducted some business in the state.¹⁰⁷ Furthermore, unlike the factual circumstances in *Shutts*, where the great majority of the disputed gas leases were located within the forum, most of the transactional subject matter in *Miner* occurred outside the forum.¹⁰⁸ If Gillette's promotion had directed that the money solicited be sent to an Illinois entity, Illinois may have had a special interest in adjudicating the suit on behalf of the national plaintiff class.¹⁰⁹ Because Gillette had incorporated in Delaware, maintained its headquarters in Massachusetts, and directed that all funds solicited be sent to a Minnesota entity, there was little reason for Illinois to adjudicate the nonresident claims.¹¹⁰

Nevertheless, the *Miner* court concluded that, according to case law, compliance with procedural due process was all that was constitutionally required to subject nonresident plaintiff class members to a foreign state's jurisdiction in representative suits.¹¹¹ In each of the cases cited by the *Miner* court, state judgments were held to bind nonresidents who, subsequent to adjudication of the class action, had instituted independent proceedings on

members and the forum. See, e.g., *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977), cert. denied, 434 U.S. 1068 (1978). These courts, however, have based their assertion of extraterritorial jurisdiction on the strength of the relationship existing between the forum and the litigation. *Id.* at 550, 557, 567 P.2d at 1310, 1314-15. Consequently, these opinions do not support the view that state sovereignty considerations are irrelevant in the class action context.

104. See Fisch, *supra* note 5, at 211-12. To the contrary, sovereignty concerns traditionally have been germane to the exercise of jurisdiction in representative suits. This statement is supported by the fact that initially class actions were restricted to intrastate disputes. See Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1154 (1966).

105. See *supra* text accompanying notes 50-51 & 60-61.

106. In *Miner*, only 12,000 of the nearly 180,000 class members were Illinois residents. See *supra* notes 72-73 and accompanying text.

107. Appellant's Petition for Leave to Appeal at 21, *Miner v. Gillette Co.*, 87 Ill. 2d 7, 428 N.E.2d 478 (1981).

108. See *supra* note 76 and accompanying text.

109. See Fisch, *supra* note 5, at 211. See, e.g., *Kimbrough v. Parker*, 344 Ill. App. 483, 101 N.E.2d 617 (1st Dist. 1951) (implicit that Illinois has interest in redressing national solicitation occasioned by Illinois entity).

110. 87 Ill. 2d at 24, 428 N.E.2d at 487 (Ryan, J., dissenting).

111. *Id.* at 15, 428 N.E.2d 483.

similar claims in other jurisdictions.¹¹² Those cases, however, are distinguishable from *Miner*, not only because they can be justified through minimum contacts analysis, but also because they involved circumstances in which the state had a special interest in hearing the suit despite the multistate character of the plaintiff class.¹¹³

The cases relied upon by the *Miner* court are of two types. One group of cases concerns the authority of the state to affect the liability of nonresident plaintiffs who have voluntarily associated with state-created entities such as state-chartered corporations.¹¹⁴ Cases in this category hold that because absentee class members had statutory notice that the state could regulate the rights of all persons who associate with its state-created corporations, their continued relationship with such companies could be construed as implied consent to be bound by all state court determinations relating to their corporate interests.¹¹⁵

It seems beyond reproach that the state may have a special reason to adjudicate the claims of nonresident class members who have interests in entities situated and licensed within the forum.¹¹⁶ Moreover, maintenance of such a relationship between nonresidents and local entities is akin to the kind of purposeful activity necessary to secure jurisdiction over nonresidents under the minimum contacts criterion.¹¹⁷ In *Miner*, no cor-

112. See, e.g., *Hartford Life Ins. Co. v. Ibs*, 237 U.S. 662 (1915) (Minnesota resident insured by Hartford Co. bound by previous Connecticut judgment levied against class of Connecticut policyholders who disputed company's power to raise premium assessments of its insureds); *Larson v. Pacific Mut. Life Ins. Co.*, 373 Ill. 614, 27 N.E.2d 458 (Illinois insureds bound by prior California judgment upholding power of state officials to liquidate and rehabilitate resident bankrupt insurer against wishes of plaintiff class of policyholders), *cert. denied*, 311 U.S. 69 (1940).

113. See generally *Impact*, *supra* note 2, at 1017-18; *Multistate Plaintiff Class Actions*, *supra* note 19, at 724-26; *Consumer Class Actions*, *supra* note 6, at 1428.

114. A judgment upholding the statutory authority of the state to liquidate and reorganize an insolvent insurer against the will of an intrastate class of insureds was held to bar the institution of similar class suits on the policies in other states. See *Carpenter v. Pacific Mut. Life Ins. Co.*, 10 Cal. 2d 307, 74 P.2d 761 (1937), *aff'd sub nom. Neblett v. Carpenter*, 305 U.S. 297 (1938). See also *Padway v. Pacific Mut. Life Ins. Co.*, 42 F. Supp. 569 (E.D. Wis. 1942) (nonresident insurance contracts subject to state's vital interest in regulating business significantly affecting public welfare); *Taylor v. Pacific Mut. Life Ins. Co.*, 214 N.C. 770, 200 S.E. 882 (1939) (nonresident policyholder bound by local judgment maintaining state's police power to reorganize businesses whose failures may have deleterious impact nationwide).

115. See, e.g., *Bernheimer v. Converse*, 206 U.S. 516, 532-33 (1967) (where courts have statutory authorization to determine stockholder liability for corporate debts, stockholder constructively consents to corporate representation in assessment proceeding); *Christopher v. Brusselback*, 302 U.S. 500, 503-04 (1938) (as consequence of corporate membership, stockholder voluntarily assumed relationship subject to state police power).

116. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14 (1950). See also *Shaffer v. Heitner*, 433 U.S. 186, 223-24 (1977) (Brennan, J., concurring in part, dissenting in part) (state has recognized interest in providing forum for determining rights and liabilities of persons that have stake in locally chartered corporations).

117. Compare *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293-99 (1980) (nonresident not personally amenable to court's jurisdiction unless he purposefully availed

porate entity was situated in Illinois with which all members of the plaintiff class had associated.¹¹⁸ Thus, the state-chartered corporation cases do not support the *Miner* court's conclusion that individuals lacking germane contacts with the forum may be bound by a local class action judgment in the absence of a special state interest in adjudicating their claims.

The second category of cases relied on by *Miner* involved property situated within the forum state but held in common by a multistate plaintiff class. These cases recognized the state's authority to bind nonresident absentees to judgments concerning disposition of the property.¹¹⁹ Most of these decisions involved nonresident contributions to insurance funds maintained in the forum by insurance companies or fraternal benefit societies. This group of "common fund" cases¹²⁰ provide little support for the *Miner* court's proposition that special state interests are not required to bind nonresident plaintiffs to local judgments. Despite the multistate composition of the contributing class, uniform distribution of property located within the state was considered a matter of public interest.¹²¹ In *Miner*, the only fund owned in common by members of the plaintiff class was located in Minnesota, where all monies solicited during the lighter promotion were sent.¹²²

It is apparent that case law relied on in *Miner* does not support the proposition that in the absence of a special state interest in adjudicating nonresident claims, nonresidents who have no relationship with the forum may nevertheless be bound by a local judgment merely because they are accorded due process protections. *Miner* is the first state court decision to

himself of the benefits of state law) and *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (nonresident not subject to in personam jurisdiction of forum unless some purposeful, bilateral activity occurred between nonresident and forum that satisfied minimum contacts requirements enunciated in *International Shoe*) with *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 92, 362 A.2d 1177, 1181 (App. Div. 1976) (plaintiff stockholders interest in local corporation sufficient to warrant exercise of jurisdiction over them).

118. See *supra* text accompanying note 110.

119. See, e.g., *Sovereign Camp of the Woodmen of the World v. Bolin*, 305 U.S. 66 (1938) (beneficial membership certificates); *Hartford Life Ins. Co. v. Ibs*, 237 U.S. 662 (1915) (mortuary fund); *Supreme Council of the Royal Arcanum v. Green*, 237 U.S. 531 (1915) (widows' and orphans' benefit fund).

120. In *Fisher v. Superior Oil Co.*, 390 P.2d 521 (Okla. 1964), the court defined a common fund as a fund owned by several persons in which each person had an interest in the entire fund. *Id.* at 526. The term "common fund" in this Note refers to monies owned jointly by a multistate group of persons but managed by a single entity within the forum state. If the fund is disturbed, all, as opposed to some, of the contributions will be affected.

121. See, e.g., *Hartford Life Ins. Co. v. Ibs*, 237 U.S. 662, 670-71 (1915) (danger that conflicting state decisions will inequitably deplete fund and injure "mutual rights" of class). A further rationale underlying extension of the state's jurisdiction in such circumstances is that the voluntary nature of the nonresident's contributions evidences contact with the forum which independently is sufficient to support jurisdiction. See *Impact*, *supra* note 2, at 1016; *Multistate Plaintiff Class Actions*, *supra* note 19, at 725-26. See also *supra* note 116.

122. 87 Ill. 2d at 21, 428 N.E.2d at 486 (Ryan, J., dissenting). Ironically, it can be argued that the *Miner* court's reliance on the common fund cases suggests that Minnesota had a significantly greater interest in adjudicating the nonresident claims than did Illinois.

condone the certification of a multistate plaintiff class where the state has no interest, aside from judicial efficiency, in adjudicating the claims of nonresidents who have no germane affiliation with the forum. Absent a special state interest in adjudicating the rights of persons who lack germane contacts with the forum, it is questionable whether a judgment purporting to bind these individuals would command full faith and credit throughout the Union.¹²³

IMPACT

Unless the Supreme Court eventually compels states to recognize multistate class action judgments promulgated by state courts that have no special interest in adjudicating nonresident claims, it is clear that these judgments will not be accorded binding effect in some state courts. Courts in Pennsylvania¹²⁴ and New Jersey¹²⁵ have indicated that they will not honor such judgments because these judgments, in effect, abrogate the significance of state sovereignty in the class action context.¹²⁶ Curiously, even though the *Miner* decision is supposedly grounded on Kansas precedent, it is uncertain that *Miner* would receive full faith and credit in that state.¹²⁷ In *Shutts*, the Kansas Supreme Court stressed that irrespective of procedural due process protections, if no special state interest justified inclusion of a multistate class lacking contact with the forum, nonresidents would be excluded from the plaintiff class.¹²⁸

The manner in which the remaining states will respond to *Miner* depends on the position each will assume regarding the significance of state sovereignty in the class action context. The prevalent judicial attitude is that respect for the sovereign authority of state jurisdictions mandates that the forum have some special interest in the litigation in order to legitimately preempt other jurisdictions from entertaining the suit.¹²⁹ The contrary argument is twofold. First, because class actions purportedly provide constitutionally sufficient protection of an absent class member's individual substantive claims, the interest of the class member's home state in providing him with a forum for redress is irrelevant in the event another jurisdiction first grants him an opportunity to obtain relief in its courts.¹³⁰

123. The fact that nonresidents receive notice of the suit and have a chance to opt out of the class is conceivably irrelevant because a court devoid of authority to bind absentees supposedly also lacks authority to require these persons to decline the opportunity to participate. See Fisch, *supra* note 5, at 212; *Multistate Plaintiff Class Actions*, *supra* note 19, at 734.

124. See *Klemow v. Time, Inc.*, 466 Pa. 189, 352 A.2d 12 (1976), *cert. denied*, 429 U.S. 828 (1977).

125. See *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 362 A.2d 1177 (App. Div. 1976).

126. See *supra* notes 102-05 and accompanying text.

127. See 87 Ill. 2d at 24, 428 N.E.2d at 487 (Ryan, J., dissenting).

128. *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 550, 557, 567 P.2d 1292, 1310, 1314-15 (1977), *cert. denied*, 434 U.S. 1068 (1978).

129. See *id.*; *Feldman v. Bates Mfg. Co.*, 143 N.J. Super. 84, 90-92, 362 A.2d 1177, 1180-81 (App. Div. 1976). See *supra* notes 102-04 and accompanying text.

130. See *Developments*, *supra* note 43, at 1318, 1404 & n.73.

Second, imposing territorial limitations on state jurisdictional authority in the class action context would seriously frustrate judicial efficiency, the very policy underlying utilization of the class action mechanism.¹³¹

If all courts eventually were to adopt the *Miner* approach and assert that the only requirement necessary to certify a multistate plaintiff class is compliance with procedural due process, perhaps the only adverse consequence which may result is that a race for judgment will ensue when two jurisdictions simultaneously adjudicate the claims of the same plaintiff class.¹³² Until the validity of *Miner*-type actions is universally recognized, however, several adverse legal effects may occur as a result of imperfect res judicata treatment being afforded such judgments.¹³³

Although the defendant would risk being subject to numerous suits in the absence of multistate class suits, if the defendant litigates under the impression that he is risking liability to a national plaintiff class in a single proceeding, it would seem oppressive to subject him to subsequent actions in other states in the event he secures a favorable judgment in the initial adjudication.¹³⁴ Moreover, not only is a multistate class action conceivably more difficult and time consuming to adjudicate than single-state class suits,¹³⁵ but maintenance of the former is no more efficient than a series of the single-state suits if the class suit purporting to have national effect pro-

131. See Ross, *supra* note 1, at 425-26.

132. Numerous class suits arise contemporaneously as a result of a particular course of conduct. See, e.g., *In re Turner Enters.* 521 F.2d 775, 777 (3d Cir. 1975) (federal class suit conflicted with similar state class action against common defendant); *West Virginia v. Charles Pfizer & Co.*, 440 F.2d 1079, 1082-83 (2d Cir. 1971) (66 class actions pending against drug companies for identical antitrust violations consolidated into one action comprised of three broad subclasses). Note that unlike the federal system, see 28 U.S.C. § 1407 (1976 & Supp. III 1979) (provision for consolidation of multidistrict litigation), there is no mechanism for consolidating identical class actions simultaneously arising in states from a defendant's wrongful conduct.

133. In general, the doctrine of res judicata provides that when a court of competent jurisdiction decides the merits of a case, all parties to the action are subsequently bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876). See also *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948) (if judgment res judicata, it terminates plaintiff's cause of action on all grounds, absent fraud). Should all courts not recognize the validity of a court's decision, the decision will receive imperfect res judicata treatment.

134. See *Multistate Plaintiff Class Actions*, *supra* note 19, at 738. Professor Brainerd Currie noted the unfairness of such a result in a discussion of the contemporary ramifications of the doctrine of mutuality. See Currie, *Mutuality of Collateral Estoppel: Limits of the Bernhard Doctrine*, 9 STAN. L. REV. 281, 285-89 (1957) [hereinafter cited as Currie].

135. Tornquist, *supra* note 1, at 47; *Consumer Class Actions*, *supra* note 6, at 1448. A multistate class action may not be any more tedious to adjudicate than an intrastate class suit if the law of the forum is found to be controlling, see, e.g., *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 239-41, 271 N.W.2d 879, 885-86 (1978) (judicial task simplified by applying single state's law to multistate dispute), or if the class can be consolidated into a minimal number of subclasses for choice of law purposes. See *Miner v. Gillette Co.*, 87 Ill. 2d 7, 18, 428 N.E.2d 478, 484 (1981). See also ILL. REV. STAT. ch. 110, § 57.3(b) (1979) (subclass provision).

mises to be but the first of numerous suits adjudicating the claims of similarly situated persons. In this respect, because the class action statutes of many states require class actions to be the "superior" means of efficiently resolving the dispute,¹³⁶ maintenance of *Miner*-type actions, having imperfect res judicata effect, would contravene the statutory precepts of these forums.¹³⁷

In addition to the adverse legal effects generated by non-uniform adoption of multistate class judgments like *Miner*,¹³⁸ the opinion will have adverse practical consequences within Illinois as well. By eliminating all territorial limitations on certification of a national plaintiff class, *Miner* enhances the attractiveness of Illinois class suits to deter consumer exploitation, and thus, will encourage the filing of multistate consumer class suits in Illinois.¹³⁹ As in *Miner*, perhaps the only connection such suits will have with Illinois will be that the defendant does business within the forum and the nonresident and resident claimants seek common relief. If such suits are afforded imperfect res judicata treatment, the Illinois judicial system may be brought into disrepute.¹⁴⁰ Furthermore, because class suits are inherently time consuming to adjudicate,¹⁴¹ entertaining more of these suits will place

136. See, e.g., KAN. STAT. § 60-223(b)(3) (1976); OR. REV. STAT. § 13.220(2)(b) 2 (1977); ALA. R. CIV. P. 23(b)(3); ARIZ. R. CIV. P. 23(b)(3); ARK. R. CIV. P. 23(b); COLO. R. CIV. P. 23(b)(3); D.C. R. CIV. P. 23(b)(3); HAWAII R. CIV. P. 23(b)(3); IDAHO R. CIV. P. 23(b)(3); KY. R. CIV. P. 23; MASS. R. CIV. P. 23(b); MINN. R. CIV. P. 23.02(3); OHIO R. CIV. P. 23.01(3); TENN. R. CIV. P. 23.01(3); TEX. R. CIV. P. 42(b)(4); UTAH R. CIV. P. 23(b)(3); VT. R. CIV. P. 23(b)(3); WASH. R. CIV. P. 23(b)(3). These statutes are derived from the federal rule which requires that maintenance of a class action be "superior to other available methods for the fair and efficient adjudication of the controversy." FED. R. CIV. P. 23(b)(3).

137. Illinois courts have more discretion than their federal counterparts in determining whether to allow class actions to proceed. See Forde, *supra* note 7, at 230. In Illinois, as opposed to the federal system, initiation of a class action merely must be an "appropriate," ILL. REV. STAT. ch. 110, 2-801 (1981), rather than a "superior," FED. R. CIV. P. 23(b)(3), means of adjudicating the dispute. Even under this more lenient standard, however, it is uncertain that a multistate class suit which fails to bind all class members could be permitted.

138. There are a few factors that may marginally inhibit subsequent suits from being brought in states that challenge, on jurisdictional grounds, a previous multistate class action judgment favoring the defendant. For example, because class suits are time consuming to adjudicate, see Duval, *The Class Action as an Antitrust Enforcement Device: The Chicago Experience*, AM. B. FOUND. RESEARCH J. 1023, 1024, the statute of limitations in other jurisdictions may run during the initial action. See, e.g., *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 545, 567 P.2d 1292, 1307 (1977), cert. denied, 434 U.S. 1068 (1978). In addition, if the defendant initially prevails, the first judgment may deter future suits from being filed because potential class representatives may feel that maintenance of further suits would be futile in light of the prior court's resolution of the dispute. See Comment, *The Spurious Class Suit: Procedural and Practical Problems Confronting Court and Counsel*, 53 NW. U.L. REV. 627, 633 (1958).

139. 87 Ill. 2d at 27-28, 428 N.E.2d at 488-89 (Ryan, J., dissenting).

140. See Currie, *supra* note 134, at 288-89.

141. A recent empirical study of two federal district courts with heavy caseloads revealed that class action suits seeking damages took more than four times longer to adjudicate than similar nonclass suits. See Bernstein, *Judicial Economy and Class Actions*, 7 J. LEGAL STUD.

a greater burden on the already overburdened Illinois courts.¹⁴² Since the state has neither a duty¹⁴³ nor a special interest in hearing the claims of nonresidents who have no contact with the forum, the utility, not to mention the constitutionality, of adjudicating such suits is suspect. The above arguments demonstrate that the Illinois Supreme Court should have denied certification to the nonresident plaintiff class in *Miner*.

CONCLUSION

Since the recent expulsion of consumer class suits from the federal forum, class action advocates have been urging state courts to entertain representative suits comprised primarily of nonresident plaintiff classes. State courts are not in accordance as to whether it is relevant that nonresident absentees have germane contacts with the forum in order to be bound by local adjudications of their interests. Until the *Miner* decision, however, all courts agreed that in the absence of such contacts, a special state interest must be manifest to bind nonresident class members to state court judgments so that the forum state does not unfairly usurp the sovereign authority of sister jurisdictions to regulate transactions within their borders. The *Miner* court's failure to adhere to precedent places the decision on uncertain constitutional footing. Until the Supreme Court resolves the constitutional issues, adverse legal consequences will result if judgments obtained in suits similar to *Miner* are not accorded full faith and credit in other states.

Although the *Miner* decision clearly enhances the attractiveness of Illinois class actions to combat consumer exploitation by abrogating all territorial

349, 361, 367 (1978). The study concluded, however, that class actions were at least as efficient as nonclass suits in respect to time expended per sums recovered for injuries incurred. *Id.* at 369. *But see infra* note 143.

142. 87 Ill. 2d at 27-28, 428 N.E.2d at 488-89 (Ryan, J., dissenting). *Compare* City of Detroit v. Grinnell Corp., 495 F.2d 448, 467 (2d Cir. 1974) (because judicial resources are limited, it is uncertain that undertaking "herculean tasks" of adjudicating national class actions is in the public interest) with *In re Antibiotic Antitrust Proceedings*, 410 F. Supp. 659, 669 (D. Minn. 1974) ("neither . . . complexity of issues nor the magnitude of the claimants and the asserted damages can be allowed to preclude the fair administration of justice" in a class action).

143. *See* 87 Ill. 2d at 25, 428 N.E.2d at 487 (Ryan, J., dissenting). While the state may have a duty to provide a forum to redress nonresident claims if no better forum can be located, *see* RESTATEMENT (SECOND) OF JUDGMENTS, introductory note to chapter 2, at 23 (1980), it is suggested that the exercise of extraterritorial jurisdiction is discretionary rather than obligatory. *Id.* § 4 comment a. Consequently, from a practical standpoint, in determining whether a multistate class action should be entertained, the issue is not whether the extra time spent to adjudicate nonresident claims redresses more claims per dollars expended than a comparable number of nonclass actions. *See supra* note 141. Rather, the question is whether the extra time and money spent was warranted in light of costs imposed on the taxpayers of the forum, whose courts had no duty to hear the nonresident claims. *See* 87 Ill. 2d at 27, 428 N.E.2d 488 (Ryan, J., dissenting). Absent a special state interest to extend extraterritorial jurisdiction over a plaintiff class unaffiliated with the forum, the disutility of adjudicating these claims becomes apparent. *See Impact, supra* note 2, at 1019.

limitations on certification of a multistate plaintiff class, the court failed to consider the practical effects that adjudication of such suits may have on the Illinois judicial system. At the very least, the *Miner* opinion invites an onslaught of trivial suits to be filed in Illinois courts, suits that the state will have little reason to consider on behalf of a nonresident plaintiff class.

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